

REMARKS

By this amendment, claims 1-25 are pending, in which claims 1, 6-8, 14, 15, 20-22, and 24 are currently amended. No new matter is introduced.

The Office Action dated December 12, 2007 rejected claims 1-25 as obvious under 35 U.S.C. § 103 based on *Zhou et al.* (U.S. Patent No. 6,847,892) in view of *Gschwind et al.* (U.S. Patent No. 7,032,101).

Applicants respectfully traverse the rejection of the claims under 35 U.S.C. § 103. The basic requirements for establishing a *prima facie* case of obviousness as set forth in MPEP §2143 include (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings, (2) there must be a reasonable expectation of success, and (3) the reference (or references when combined) must teach or suggest all of the claim limitations. Applicants submit that a *prima facie* case of obviousness has not been established in the present case because, for example, (1) the cited references, either when taken singularly or in combination, do not teach or suggest all of the claim limitations, and (2) there is no proper basis for combining the references to arrive at the claimed invention.

Independent claim 1 recites “[a] method for prioritizing transmission of messages from a telemetry device, the method comprising: storing a first information element in **a device log in the telemetry device**; determining whether the first information element includes a first priority level indication; storing the first information element in **a first data structure in the telemetry device** when it is determined that the first information element includes the first priority level indication; storing a second information element in the device log; determining whether the second information element includes a second priority level indication; storing the second information element in **a second data structure in the telemetry device** when it is determined

that the second information element includes the second priority level indication; transmitting a first message based on the first information element **from the telemetry device** for receipt by an operation unit; and after transmitting the first message, transmitting a second message based on the second information element **from the telemetry device** for receipt by the operation unit, wherein an ordering of transmission is based on the first and second level priority indications.”

The Office Action cites *Zhou et al.* for the teaching of storing a first information element in a device log, storing a second information element in the device log, and transmitting a first message based on the first information element, citing column 10, lines 53-57, and column 32, lines 47-57. The Office Action acknowledges that *Zhou et al.* does not disclose priority level indications, and thus cites *Gschwind et al.* for the teaching of the remainder of the features in claim 1.

Zhou et al. describes a system that collects position and sensor data via remote localization and sensing devices (100), stores the device data at an application service provider (ASP) (200), and makes the data available to end users (25) via the ASP (200). Figures 2a and 2b of *Zhou et al.* depict two embodiments of the devices (100). Both of these embodiments are described as storing sensor readings and sending the data to the ASP (200) based on certain events (see, e.g., column 6, lines 6-10, and column 8, lines 14-23); however, *Zhou et al.* does not disclose any prioritization of the transmission of messages from the remote localization and sensing devices (100) or even that a reason exists for doing so.

While the citation to column 10, lines 53-57, in the Office Action discusses the storing of data in the device (100) and transmitting of data from the device (100) to the ASP (200), the citation to column 32, lines 47-57, in the Office Action actually relates to the storage of data in a platform database (PD) at the ASP (200) and not at the device (100). Similarly, the Office Action cites column 21, lines 54-58 (with respect to claim 2), for the teaching of “a queue in the

log;” however, this portion of *Zhou et al.* also relates to the handling of data at the ASP (200) (more specifically, at Middle Tier 400), rather than at the device (100).

Applicants note that claim 1 recites “[a] method for prioritizing transmission of messages from a telemetry device....” Applicants further note that the storing of the first and second information elements, as set forth in claim 1, are **in the telemetry device**, and that the transmitting of first and second messages, as set forth in claim 1, are **from the telemetry device**. Assuming for the sake of argument that the remote localization and sensing devices (100) of *Zhou et al.* are considered to be telemetry devices, the ASP (200) is clearly therefore not such a telemetry device. As was acknowledged in the Office Action, *Zhou et al.* does not disclose any prioritization of the message transmissions, and Applicants further submit that *Zhou et al.* clearly does not disclose any prioritization of the message transmissions from the remote localization and sensing devices (100) or even that a reason exists for doing so, absent hindsight. Applicants further submit that *Gschwind et al.* fails to supplement these deficiencies.

Gschwind et al. describes “an apparatus and method in a high performance processor for **issuing instructions**, comprising; a classification logic for **sorting instructions** in a number of priority categories, a plurality **of instruction queues** storing the instruction of differing priorities, and a issue logic selecting from which queue **to dispatch instructions for execution.**” (Abstract, emphasis added.) The invention described therein is intended to increase the performance of high performance processors that exploit instruction-level parallelism in programs; that is, execute more than one instruction at a time. *Gschwind et al.* states that “[w]hat is needed is a method to reduce the impact of performance-degrading events by pre-executing their backward slices without incurring substantial hardware and execution time overhead.” (Column 3, lines 32-35.)

Gschwind et al. does not “[a] method for prioritizing transmission of messages from a telemetry device...,” as recited in claim 1. *Gschwind et al.* does not describe or relate to a telemetry device, and clearly does not disclose or suggest the storing of the first and second information elements **in the telemetry device**, and the transmitting of first and second messages **from the telemetry device**, in the manner recited in claim 1. *Gschwind et al.* describes a high performance processor and processes that are performed therein, and does not describe a telemetry device or storing therein and transmitting therefrom. Thus, Applicants submit that the combination of *Zhou et al.* and *Gschwind et al.* fails to disclose all of the features recited in claim 1.

Furthermore, it is unclear why one of ordinary skill in the art at the time of the present invention would have been motivated to use a technique “to reduce the impact of performance-degrading events by pre-executing their backward slices without incurring substantial hardware and execution time overhead” that is specific to the parallel execution of multiple program instructions simultaneously to modify the transmission of data from remote localization and sensing devices (100) of *Zhou et al.* to the ASP (200). *Zhou et al.* does not disclose or suggest a reason for making such a modification, and does not disclose or suggest a need for such a modification or that any problem exists with such transmissions. It is noted again that the queue discussed in *Zhou et al.* was with respect to the ASP (200), and **not** the devices (100). Additionally, the transmission of **data** from remote localization and sensing devices (100) to the ASP (200) of *Zhou et al.* **is not analogous to** the parallel execution of multiple **program instructions** simultaneously. The transmission of data from a device and the execution of program instructions are distinctly different processes (e.g., moving data from one location to another versus providing computing capability to run/execute programs simultaneously), that

raise distinctly different issues, and that require distinctly different solutions. One of ordinary skill in the art would not have been motivated to make such a combination.

The Office Action states that the motivation for modifying the system of *Zhou et al.* to include the method of *Gschwind et al.* “would have been to create a fleet management system (Zhou, column 66, lines 46-67), that uses queues to store priority data (Zhou, column 3, lines 39-42).” (Page 4 of the Office Action.) However, Applicants submit that this statement sets forth a conclusion, and not a rationale for reaching the conclusion. This statement does not explain **why** one of ordinary skill in the art would have wanted to create a fleet management system that uses queues to store priority data. *Zhou et al.* provides no such teaching as to a reason why one of ordinary skill in the art would want or need to prioritize message transmissions from the devices (100) described therein, and *Gschwind et al.* deals with the non-analogous problem of simultaneously executing multiple program instructions and thus does not provide any rationale for why one of ordinary skill in the art would want or need to prioritize message transmissions. Thus, no reason existed at the time of the present invention to make the combination set forth in the Office Action, and, even assuming for the sake of argument that such a combination was made, it would not have resulted in the method recited in claim 1 since the applied references, either singularly or in combination, fail to disclose all of the features recited in claim 1.

Accordingly, Applicants submit that a *prima facie* case of obviousness has not been established with respect to independent claim 1. Thus, Applicants respectfully request the withdrawal of the obviousness rejection of independent claim 1, and all the claims that depend therefrom.

Independent claim 8 recites “[a] telemetry device for prioritizing transmission of messages from the telemetry device, **the telemetry device comprising: a device log ...; a first data structure ...; a second data structure ...;** and a processor configured to determine

whether the first information element includes a first priority level indication, to determine whether the second information element includes a second priority level indication, to transmit a first message based on the first information element **from the telemetry device** for receipt by an operation unit, and after transmitting the first message, to transmit a second message based on the second information element **from the telemetry device** for receipt by the operation unit, wherein an ordering of transmission is based on the first and second level priority indications.” For reasons similar to those discussed above with respect to claim 1, the cited references fail to establish a *prima facie* case of obviousness for a telemetry device with the storage and transmission capabilities set forth in claim 8. Thus, Applicants respectfully request the withdrawal of the obviousness rejection of independent claim 8, and all the claims that depend therefrom.

Independent claim 15 recites “[a] computer-readable medium carrying one or more sequences of one or more instructions for prioritizing transmission of messages from a telemetry device, the one or more sequences of one or more instructions including instructions which, when executed by one or more processors, cause the one or more processors to perform” steps that are similar to the method recited in claim 1. For the reasons discussed above with respect to claim 1, the cited references fail to establish a *prima facie* case of obviousness for claim 15. Thus, Applicants respectfully request the withdrawal of the obviousness rejection of independent claim 15, and all the claims that depend therefrom.

Independent claim 22 recites “[a] method for prioritizing transmission of messages from a telemetry device, the method comprising: storing a plurality of information elements in **a device log in the telemetry device**; selectively storing each of a group of the plurality of information elements in **one of a plurality of data structures in the telemetry device** based on a priority indicator associated with each one of the information elements of the group; selecting one of the

plurality of data structures based on one of the priority indicators; and transmitting a message including one of the information elements of the selected one of the data structures **from the telemetry device** for receipt by an operation unit.” Independent claim 24 recites “[a]n apparatus for prioritizing transmission of messages from a telemetry device, the apparatus comprising: means for storing a plurality of information elements in **a device log in the telemetry device**; means for selectively storing a group of each of the plurality of information elements in **one of a plurality of data structures in the telemetry device** based on a priority indicator associated with each one of the information elements; means for selecting one of the plurality of data structures based on one of the priority indicators; and means for transmitting a message including one of the information elements of the selected one of the data structures **from the telemetry device** to an operation unit.” For reasons similar to those discussed above with respect to claim 1, the cited references fail to establish a *prima facie* case of obviousness for claims 22 and 24. Thus, Applicants respectfully request the withdrawal of the obviousness rejection of independent claims 22 and 24, and all the claims that depend therefrom.

As Applicants’ remarks with respect to the outstanding rejections are sufficient to overcome these rejections, Applicants’ silence as to assertions by the Examiner in the Office Action or certain requirements that may be applicable to such rejections (e.g., whether a reference constitutes prior art, ability to combine references, assertions as to patentability of dependent claims) is not a concession by Applicants that such assertions are accurate or such requirements have been met, and Applicants reserve the right to analyze and dispute such in the future.

Therefore, the present application is believed to be in condition for allowance. Favorable consideration is respectfully requested. If any unresolved issues remain, it is

respectfully requested that the Examiner telephone the undersigned attorney at (703) 519-9957 so that such issues may be resolved as expeditiously as possible.

To the extent necessary, a petition for an extension of time under 37 C.F.R. §1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 504213 and please credit any excess fees to such deposit account.

Respectfully Submitted,

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